HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal Nos.1170 of 2006

Between:

M/s.Shree Mahaveer Stone Crushers,
A regd. Partnership firm,
Rep. by its Managing Partner,
Manik Chand Jain

... Appellant

And

Divisional Forest Officer,
Mahaboobnagar and another

... Respondents

::JUDGMENT::

Counsel for the appellant: Shri V. Venkata Ramana

Counsel for the respondents: Government Pleader for Forests

November 10, 2006

Per G.S. Singhvi, CJ

This is an appeal for setting aside order dated 27-10-2006 passed by the learned Single Judge, whereby he refused to quash the seizure of quarrying machinery (stone crusher and allied items) belonging to the appellant.

By an order dated 6-4-2002, Assistant Director of Mines and Geology, Mahaboobnagar, sanctioned quarry lease in favour of the appellant in respect of 4 hectares of land situated in Survey Nos.260/86 and 260/87 of Kadthal Village, Amangal Mandal, Mahaboobnagar District. The tenure of the lease was ten years. It

appears that while undertaking quarry operations, the appellant encroached the area of reserved forest, Kadthal and established stone crusher in Survey No.260/18. This was objected to by the officers of the Forest Department. With a view to preempt the action which was likely to be taken by the officers of the Forest Department to protect the reserved forest, the appellant filed Writ Petition No.18263 of 2006 for issue of a mandamus to the respondents i.e., Divisional Forest Officer, Mahaboobnagar and Forest Range Officer, Amangal not to interfere with the quarry and crushing operations.

In the affidavit filed by Manik Chand Jain, Managing Partner of the appellant, it was averred that quarry operation was started after the land was surveyed and demarcated by the officers of Revenue and Forest Departments. According to the deponent, Survey No.260/15 and 260/16 (old) corresponding to new Survey Nos.260/86 and 260/87 were patta lands and did not form part of the reserved forest, Kadthal, but the authorities of Forest Department were interfering with the quarrying and crushing operations.

In the counter filed by him, Divisional Forest Officer, Mahaboobnagar averred that by taking advantage of the quarry lease sanctioned by the Assistant Director of Mines and Geology, the writ petitioner established stone crusher in the Reserved Forest Block, Kadthal (Survey No.260/18). It was further averred that before granting quarry lease, the Assistant Director did not obtain 'No Objection Certificate' (NOC) from the Forest Department as per the requirement of Government Memo dated 20-4-2001. Still further, it was averred that the common area of Ac.1816-00 situated in Survey No.260/18 of Kadthal Village was included in the Kadthal Reserved Forest Block by notification dated 18-7-1970 issued under Section 15 of the Andhra Pradesh Forest Act, 1967 (for short, 'the Act'). The Divisional Forest Officer claimed that the petitioner had illegally encroached the reserved forest and established stone crusher. He also relied on the report prepared on the basis of joint inspection

carried out by the officers of Mines and Geology, Forest and Revenue Departments on 24-8-2006 and averred that the crusher and quarrying area are within the Reserved Forest Block, Kadthal and that District Collector, Mahaboobnagar vide his letter dated 31-8-2006 asked Deputy Director of Mines and Geology, Hyderabad to cancel the quarry lease sanctioned in favour of the petitioner. In an additional affidavit filed by him, Divisional Forest Officer, Mahaboobnagar claimed that due to establishment of stone crusher and blasting activities and quarrying operations undertaken by the petitioner, heavy damage has been caused to the forest wealth valued at Rs.185.774 lakhs and, with a view to save the reserved forest, cases were booked against the petitioner under Section 20 (1) (c) (ii), (v), (vi) and (x) of the Act and notice was issued to Divisional Engineer (Electrical), Jadcherla to show cause as to why action should not be taken against him for violating the provisions of the Forest Conservation Act, 1980 by laying electrical transmission lines in reserved forest block for supplying power to the petitioner's crusher. As a sequel to this, the power supply to the establishment of the petitioner was disconnected.

During the pendency of the writ petition, the officers of the Forest Department seized the quarrying machinery of the appellant on 26-9-2006. This led to the institution of the second writ petition, which was registered as Writ Petition No.20809 of 2006. In the affidavit filed in the second petition, Shri Manik Chand Jain averred that respondent Nos.1 and 2 seized the machinery i.e. JCB, 5 tractors, wire cutter, motors, explosive boxes, gear boxes, compressors and generators without giving notice and conducting any panchanama. He further averred that the petitioner (appellant herein) has been operating stone quarry under a valid lease granted by the Assistant Director of Mines and Geology, and, therefore, respondent Nos.1 and 2 have no right to interfere with the quarry operation and that they do not have the jurisdiction to take action under Section 44 of the Act.

In the counter-affidavit filed in the second writ petition, it was averred that the vehicles and machinery found in the reserved forest area were seized and cases were registered against the petitioner for violating the provisions of the Act. It was further averred that action is being taken under Section 44 of the Act for confiscation of the seized property.

The appellant filed rejoinder affidavits to controvert the averments contained in the counter-affidavits.

After taking note of the rival pleadings and documents produced by the parties, the learned Single Judge disposed of the writ petition with the direction that the lease granted to the petitioner shall not be varied without conducting enquiry. She directed the respondents in the writ petition not to interfere with the quarrying operations in Survey No.260/87 because there was no dispute as regards that survey number. As regards Survey No.260/86, the learned Single Judge gave liberty to Assistant Director of Mines and Geology, Mahaboobnagar to pass appropriate order for regulating/restricting the mining operations keeping in view the stand taken by the Forest Department. As regards the seizure of the machinery, the learned Single Judge observed that it will be open to the forest officer to proceed with the enquiry and pass an appropriate order in accordance with law within four weeks from the date of receipt of the order. The learned Single Judge also ordered release of the machinery subject to the condition of furnishing bank guarantee to the extent of 50% of the value of the seized stock and security of the immovable property to the satisfaction of Divisional Forest Officer, Mahaboobnagar for the balance price. In the course of judgment, the learned Single Judge also observed that there is a dispute between the parties with regard to identity of the land in question and that there is no consensus between the Department of Mines and Geology on the one hand and the Forest Department on the other. In the opinion of the learned Single Judge, such a disputed question cannot be

enquired into and decided by the High Court under Article 226 of the Constitution.

Shri V. Venkata Ramana, learned counsel for the appellant assailed the findings and observations made by the learned Single Judge and argued that her refusal to quash the seizure of the quarry machinery should be treated as sufficient for entertaining the appeal. Learned counsel laid considerable emphasis on the fact that lease was sanctioned in favour of the appellant after the land had been surveyed by the authorities of the Revenue Department and the area had been demarcated. Shri Venkata Ramana referred to order dated 27-2-1997 passed by Regional Deputy Director, Survey and Land Records, Hyderabad to show that land forming part of old Survey Nos.260/15 and 260/16 is patta land and argued that the same cannot be treated as part of reserved forest merely because in the revision survey, the same is shown as included in the forest. He further argued that even if the learned Single Judge's refusal to adjudicate the so-called disputed questions of fact is treated as justified, the Division Bench should quash the proceedings initiated against the appellant under Section 20 read with Section 44 of the Act. Learned counsel emphasized that none of the ingredients specified in Section 44 of the Act are attracted in the appellant's case and argued that the respondents should be ordained to release the machinery and equipments of the appellant without insisting on furnishing of the bank guarantee and security of the immovable property.

In our opinion, there is no merit in the arguments of the learned counsel and the appeal is liable to be dismissed. In paragraph 5 of affidavit dated 11-10-2006 filed by him, Shri L. Lohitasyudu, Divisional Forest Officer, Mahaboobnagar has given the details of the procedure followed by the government for declaring the reserved forest. According to the deponent, notification dated 19-3-1968 was issued under Section 4 specifying the situation and boundary limits of

the land proposed to be constituted as reserved forest and an authorized Settlement Officer was appointed to consider the objections, if any, received against the declaration and to make enquiry and determine the existence, nature and extent of any right or claim by any person. Thereafter, proclamation under Section 6 of the Act was published. This was followed by notification dated 13-7-1970 issued under Section 15 of the Act, which was published in Andhra Pradesh Gazette No.34-C dated 20-8-1970. In his rejoinder affidavit, Sri Manik Chand Jain, Managing Partner of the appellant did not controvert these facts. Therefore, it must be held that the area specified in notification dated 13-7-1970 constitute reserved forest.

It is not the pleaded case of the appellant that it had sought permission from the competent authority to undertake quarry operation in the reserved forest or that the Mines and Geology Department had obtained NOC from the Forest Department. The appellant also did not produce any evidence to controvert the assertion contained in the affidavit filed on behalf of respondent Nos.1 and 2 that in the joint inspection undertaken by the officers of Mines and Geology Department, Forest Department and Revenue Department, it was established that the appellant had established stone crusher and was carrying on quarry operations within the reserved forest. Therefore, contrary assertion contained in the affidavit of Sri Manik Chand Jain cannot be relied for recording a finding that the appellant has not been carrying quarry operation in the reserved forest. In any case, we do not find any valid ground to upset the view expressed by the learned Single Judge that a seriously disputed question of fact arises for determination by the Court and such an exercise cannot be undertaken by the High Court under Article 226 of the Constitution of India.

The issue which remains to be considered is whether the action of the respondents to seize the machinery and equipment belonging to the appellant is violative of the provisions of the Act and whether

the learned Single Judge committed an error by directing release of the machinery etcetera on furnishing of bank guarantee and security of the immovable property.

Section 20 (1) of the Act, which specifies the penalties for trespass or damage in reserved forests and acts prohibited in such forests, and Section 44, which provides for seizure of the property liable to confiscation and lays down the procedure to be followed for confiscation, read as under:

> "**20.Penalties for trespass of damage in reserved forest and acts prohibited in such forests:-**
>
> (1) Any person who -
>
> (a) contravenes the provisions of clause (b) of sub section (1) of section 7;
>
> (b) sets fire to a forest notified to be reserved under Section 4 or kindles in such forest any fire or leaves any fire burning in such manner as to endanger such forest;
>
> (c) in a reserved forest -
>
> (i) kindles, keeps or carries any fire, except at such season and subject to such conditions as the Divisional Forest Officer may, from time to time, specify in this behalf;
>
> (ii) trespasses, pastures cattle or allows cattle to trespass;
>
> (iii) causes any damage, either wilfully or negligently in felling or cutting any tree or dragging any timber;
>
> (iv) fells, girdles, lops, taps or burns any tree or strips off the bark or leaves from, or otherwise damages the same;
>
> (v) quarries stones, burns lime or charcoal;
>
> (vi) collects or subjects to any manufacturing process, any forest produce;
>
> (vii) clears or breaks up or ploughs any land for cultivation or for any other purpose ;
>
> (viii) hunts, shoots, fishes, poisons water or sets traps or snares;
>
> (ix) damages, alters or removes any wall, ditch, embankment, fence, hedge, or railing; or
>
> (x) removes any forest produce ;
>
> (d) abets any of the acts specified in clauses (a), (b) and (c), shall, in addition to such compensation for damages caused to the forest as the court may direct to be paid, be punishable

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(i) in every case where any of the acts aforesaid relates to sandalwood or red sanderswood with imprisonment for a term which shall not be less than three months but which shall not exceed one year and with fine which shall not exceed ten thousand rupees;

(ii) in any other case, with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees or with both.

44. Seizure of property liable to confiscation and procedure thereupon:-

(1) Where there is reason to believe that a forest offence has been committed in respect of any timber or forest produce, such timber, or forest produce, together with all tools, ropes, chains, boats, vehicles and cattle used in committing any such offence, may be seized by any forest officer or police officer.

(2) Every officer seizing any property under this section shall place on such property, or the receptacle, if any, in which it is contained, a mark indicating that the same has been so seized and shall, except where the offender agrees in writing forthwith to get the offence compounded without any unreasonable delay either produce the property seized before an officer not below the rank of an Assistant Conservator of Forests authorised by the Government in this behalf by notification (hereinafter referred to as the authorised officer) or make a report of such seizure to the magistrate:

Provided that where the timber or forest produce with respect to which such offence is believed to have been committed is the property of the Central or State Government and the offender is not known, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to the Divisional Forest Officer.

(2-A) Where an authorised officer seizes under sub-section (1) any timber or forest produce or where any such timber or forest produce is produced before him under sub-section (2) and he is satisfied that a forest offence has been committed, in respect thereof, he may order confiscation of the timber or forest produce so seized or produced together with all tools, ropes, chains, boats or vehicles used in committing such

offence.

(2-B) No order confiscating any property shall be made under sub section (2-A) unless the person from whom the property is seized is given,-

(a) a notice in writing informing him of the grounds on which it is proposed to confiscate such property;

(b) an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds for confiscation; and

(c) a reasonable opportunity of being heard in the matter.

(2-C) Without prejudice to the provisions of sub-section (2-B), no order of confiscation under sub-section (2-A) of any tool, rope, chain, boat or vehicle shall be made if the owner thereof proves to the satisfaction of the authorised officer that it was used in carrying the property without his knowledge or connivance or the knowledge or connivance of his agent, if any, or the person in charge of the tool, rope chain boat or vehicle in committing the offence and that each of them had taken all reasonable and necessary precautions against such use.

(2-D) Any forest officer not below the rank of a Conservator of Forests empowered by the Government in this behalf by notification, may within thirty days from the date of the order of confiscation by the authorised officer under sub-section (2-A) either suo motu on application call for and examine the record of that order and may make such inquiry or cause such inquiry to be made and pass such orders as he may think fit.

Provided that no order prejudicial to any person shall be passed without giving him an opportunity of being heard.

(2-E) Any person aggrieved by an order passed under sub-section (2-A) or sub section (2-D) may within thirty days from the date of communication to him of such order, appeal to the District Court having jurisdiction over the area in which the property has been seized, and the District Court shall after giving an opportunity to the parties to be heard, pass such order as it may think fit and the order of the District Court so passed shall be final.

(3) Any forest officer not below the rank of a Forester, who or whose subordinate has seized any tools, ropes, chains, boats, vehicles or cattle under sub-section (1) and where he makes a report of such seizure to the magistrate under sub section (2) may release the same on the execution by the

owner thereof a bond for the production of the property so released, if and when so required before the magistrate.

(4) Upon the receipt of any report under sub-section (2), the magistrate shall, except where the offence is compounded, take such measures as may be necessary for the trial of the accused and the disposal of the property according to law.

(5) The property seized under this section, shall be kept in the custody of the forest officer not below the rank of a Forest Guard or the village headman until the compensation for compounding the offence is paid or until an order of the magistrate directing its disposal is received."

An analysis of Section 20(1)(c) shows that any person who trespasses in a reserved forest or causes any damage by felling or cutting any tree or dragging any timber or undertakes quarry operation in a reserved forest can be prosecuted and sentenced to imprisonment for a term extending up to one year. Section 44(1) lays down that where a designated officer has reason to believe that forest offence has been committed in respect of any timber or forest produce, then he can seize such timber or forest produce together with all tools, ropes etcetera. Sub-sections (2-A) to (2-C) of Section 44 lays down the procedure for confiscation of the seized timber or forest produce or tools etcetera.

The facts of this case show that the appellant has been accused of damaging the forest to the tune of Rs.185.774 lakhs by undertaking quarry operations in the reserved forest. Therefore, the action of the respondents to register case under Section 20(1)(c) (ii), (v), (vi) and (x) of the Act cannot be termed as without jurisdiction. Section 44(1) provides for seizure of timber or forest produce together with all tools, ropes, chains, boats, vehicles etcetera used in committing a forest offence. By undertaking quarry operations, which, as mentioned above, resulted in damage to the forest wealth to the tune of Rs.187 lakhs, the appellant appears to have committed offence under Section 20(1)(c)(ii)(iii)(v) and (viii) of the Act. Therefore, seizure of the

plant and machinery cannot be dubbed as illegal or arbitrary and we do not find any justification to direct the release of plant and machinery without insisting on furnishing of security.

In the result, the appeal is dismissed.

G.S. SINGHVI, CJ

November 10, 2006

C.V. NAGARJUNA REDDY, J

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